IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/02/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.35286 of 2002

Dr.N.V.R.Kapali,
102, Venkatachala Mudali Street,
Mylapore,
Chennai-600004. .. Petitioner

-Vs-

1. University of Madras,
rep. by its Registrar,
Chepauk, Chennai-600005.

2. Dr.Naseem Akthar,
No.13, 5th Street,
Sakthi Nagar,
Chennai-600094.

3. The University Grants Commission,
rep. by its Secretary,
Bahadur Shah Jaffar Marg,
New Delhi. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.Mohan Parasaran, Sr.Counsel
for M/s.Sathish Parasaran

For Respondents: Mr.N.Rajan - R1
Mr.P.Jyothimani - R2
Mr.S.Udhayakumar - R3

:O R D E R

The admitted facts are as follows:
The petitioner was appointed as Project Officer in Population Education Resource Centre (for short 'PERC'), in the Department of Adult and Continuing Education, University of Madras, with effect from 10.4.1987, one of

the 20 point programme sought to be implemented by the third respondent-Commission through the first respondent-University and thereafter, was appointed as Assistant Director in the PERC itself with effect from 5.8.1989, while the second respondent was appointed as Project Officer in the Department of Adult and Continuing Education, an extension programme under UGC 16th point of the 20 point programme with effect from 14.8.1989, sought to be implemented again by the third respondent-Commission through the first respondentUniversity. Both the programmes viz., Population Education Resource Centre as well as Adult and Continuing Education and extension programme come under the scheme called "Eradication of Illiteracy" and "Population Continuing Education" under the same department called "Adult and Continuing Education".

1.2. The workload and the entire activities of the Adult and Continuing Education and extension programme, which were initially under the third respondent-Commission, were transferred to the first respondent-University directly with effect from 1.4.1990 along with those incumbents and accordingly, the second respondent got absorbed under the first respondent-University with effect from 1.4.1990 as Project Officer of the Adult and Continuing Education directly under the first respondent-University.

1.3. However, the workload and the entire activities of the Population Education and Resource Centre were transferred from the third respondent-Commission to the first respondent-University with effect from 1.4.1997 along with those incumbents and as a result, the writ petitioner was absorbed as an employee of the first respondent-University directly with effect from 1.4.1997, of course in his capacity as Assistant Director of the PERC.

1.4. Consequently, the petitioner, who was initially appointed as Project Officer in PERC on 10.4.1987 and then appointed as Assistant Director in PERC on 5.8.1989, was absorbed as an employee of the first respondent-University only with effect from 1.4.1997, while the second respondent, who was appointed as Project Officer in Adult and Continuing Education and Extension Programme on 14.8.1989, was absorbed as the direct employee of the first respondent-University much earlier, viz., 1.4.1990 when compared to that of the writ petitioner.

1.5. While the undisputed fact remains that the post of Assistant Director is higher rank carrying higher scale of pay equivalent to that of a Reader and the post of Project Officer is lower rank carrying lower scale of pay equivalent to that of a Lecturer in the University, the first respondent-University by proceedings dated 2.9.2002 based on the resolution of the Senate dated 7.8.2002, fixed the seniority of the petitioner below the second respondent in the department of Adult and Continuing Education as follows:

1.Dr.Naseem Akthar - 1/4/90 (Project Officer)
(second respondent)

2.Dr.N.V.R.Kapali - 1/4/97 (Assistant Director)

(writ petitioner)

1.6. Aggrieved by the same, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the first respondent comprised in the decision dated 7.8.2002 of the Syndicate of the first respondent-University as communicated in proceedings No.D-1(B)/TE/2002/26 17 dated 2.9.2002, quash the same and consequently to direct the first respondent to fix the date of absorption of the petitioner as 5.8.1 989 which is the date of his joining and to reckon his station seniority from the said date.

2. Mr.Mohan Parasaran, learned Senior Counsel appearing for the petitioner, challenges the impugned proceedings of the first respondentUniversity dated 2.9.2002 fixing the seniority of the petitioner and the second respondent on the ground that the same is arbitrary, discriminatory and violative of Article 14 and 19(1)(g) of the Constitution of India, as unequals are treated as equals.

3. Per contra, Mr.N.Rajan, learned counsel appearing for the first respondent-University, submits that the seniority could be reckoned from the date of absorption, but cannot be from the date of recruitment under the other employer, viz., the third respondent-Commission herein and therefore, there is neither arbitrary nor unreasonable exercise of the power by the first respondent-University nor discrimination or violation of Article 14 and 19(1)(g) of the Constitution of India.

4. Mr. P. Jyothimani, learned counsel appearing for the second respondent, besides adopting the counter argument made by the first respondent-University, further submits that the second respondent having been absorbed much earlier by the first respondent-University as the University employee as early as 1.4.1990, she is entitled to claim seniority over the petitioner, who got absorbed and became the employee of the first respondent-University only from 1.4.1997 and therefore, there is neither arbitrary nor unreasonable exercise of power in the impugned proceedings dated 2.9.2002 nor any discrimination or violation of Articles 14 and 19(1)(g) of the Constitution of India.

5. Mr.S.Udhayakumar, learned counsel appearing for the third respondent Commission submits that both Population Education Resource Centre and Adult, Continuing Education & Extension programme come under the same department viz., Adult and Continuing Education Department under the third respondent-Commission and both the petitioner and the second respondent even though were absorbed at different points of time under different schemes, they were appointed in the same department viz., Adult and Continuing Education in the first respondentUniversity, their previous service in the respective scheme or programme has to be given weightage in fixing the seniority.

6. I have given a careful consideration to the submissions of all the parties.

7.1. The fact that the Population Education Resource Centre as well as the Adult and Continuing Education and Extension programme coming under the

same department, viz., Adult and Continuing Education Department, in order to achieve the object of eradicating illiteracy either under the third respondent-Commission or under the first respondent-University, is not disputed.
7.2. Similarly the fact that though the petitioner was originally appointed as Project Officer in PERC on 10.4.1987 and thereafter, appointed as Assistant Director on 5.8.1989, whereas the second respondent was appointed as the Project Officer in Adult, Continuing Education & Extension programme only from 14.8.1989 and the post of Assistant Director is higher than the Project Officer carrying higher scale of pay is also not in dispute.

7.3. But, the controversy with regard to the date of absorption arose only when the activities of the Adult, Continuing Education and Extension programme, which was initially functioning under the third respondent-Commission, got merged with the first respondent-University in the department of Adult and Continuing Education much earlier i.e. on 1.4.1990 whereas that of the Population Education Resource Centre got transferred and merged with the first respondent-University under the department of Adult and Continuing Education only on 1.4.1997.

7.4. The service rendered in work charge establishment cannot be taken into account for seniority in regular establishment and the seniority has to be determined only on the basis of the date of absorption in regular establishment, as held by the Apex Court in State of Maharashtra v. Purshottam, reported in (1996) 9 SCC 266.

7.5. Even though both the petitioner and the second respondent worked under two different schemes of the third respondent-Commission, but under the same department viz., Adult and Continuing Education, the second respondent got absorbed under the first respondent much earlier viz., 1.4.1990, while the petitioner got absorbed as an employee of the first respondent-University at later point of time namely 1.4.19 97. Of course, it is too difficult to deem that the PERC got transferred and merged along with the incumbents much earlier than 1.4.199 7, as it was continued to be under the third respondent-Commission till then. But, the service rendered by the petitioner in PERC under the third respondent-Commission cannot be ignored totally, which necessitated this Court to take note of the fact that the period of service rendered by the petitioner in his capacity as Assistant Director in the parent department viz., Adult and Continuing Education under the third respondent-Commission, is to be taken into account when the PERC got transferred and merged with the first respondent-University, particularly the posts held by the petitioner and the second respondent are distinguished in nature, rank as well as scale of pay.

7.6. In that view of the matter, I am of the considered opinion that the question of fixing inter se seniority between the incumbents holding the post of Assistant Director and that of the Project Officer does not arise, which relevant criteria went unnoticed by the first respondent-University, has now created anomaly in the impugned proceedings dated 2.9.2002. When the

petitioner and the second respondent obviously represent two different categories, the question of treating both of them similarly does not arise, as it amounts to treating unequals as equals, reflecting discrimination, arbitrariness, and unreasonableness, attracting Article 14 of the Constitution of India. The first respondent-University is, therefore, obliged to strike a balance between interests of the petitioner, who was holding the post of Assistant Director in the PERC and the second respondent, who was holding the post of Project Officer while roping them in the same department of the first respondent-University. Since this aspect was not taken into consideration by the Senate in the resolution dated 7.8.2002, I am inclined to interfere with the impugned proceedings dated 2.9.2 002, quashing the same and remitting the matter to the Senate to take appropriate decision in accordance with the first respondentUniversity Regulations.
The writ petition is allowed with the above direction. No costs.

Index : Yes
Internet : Yes

ATR

To:

1. The Registrar,
University of Madras,
Chepauk, Chennai-600005.

2. The Secretary,
University Grants Commission,
Bahadur Shah Jaffar Marg,
New Delhi.